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8 AEROENLACES NACIONALES, S.A. DE C.V.  
trading as VIVA AEROBUS

12 MARIA PRADO, an individual, ) Case No.:  
13 Plaintiff, )  
14 vs. )  
15 CITY OF LOS ANGELES, LOS )  
16 ANGELES WORLD AIRPORTS; VIVA )  
17 AEROBUS USA, LLC., a business )  
entity; and Does 1 through 100, )  
Inclusive, )  
18 Defendants. )  
19 \_\_\_\_\_ )

20 TO THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR THE  
21 CENTRAL DISTRICT OF CALIFORNIA:

22       Defendant Aeroenlaces Nacionales, S.A. de C.V., trading as Viva Aerobus  
23 (sued herein as Doe #3 and hereinafter referred to as “Viva Aerobus”), by and  
24 through its attorneys of record, Condon & Forsyth LLP hereby removes this  
25 pending action from the Superior Court of the State of California for the County of  
26 Los Angeles to the United States District Court for the Central District of  
27 California on the following grounds:

28 || 1. On October 27, 2023, there was filed in the Superior Court of the

1 State of California for the County of Los Angeles the attached Complaint bearing  
2 Case No.: 23TRCV03604 in the records and files of that court. Plaintiff's  
3 Complaint alleged two causes of action for: (1) Liability for Dangerous Condition  
4 of Public Property, Pursuant to Government Code § 835, et seq.; and (2) Vicarious  
5 Liability for Wrongful Acts or Omissions by Public Entity Employees and/or  
6 Retention of Unfit Employer Cal. Gov't. Code § 815.2.

7       2. On February 7, 2024, Plaintiff filed a First Amended Complaint  
8 alleging two causes of action for: (1) Vicarious Liability for Wrongful Acts or  
9 Omissions by Public Entity Employees and/or Retention of Unfit Employer Cal.  
10 Gov't. Code § 815.2; and (2) Negligence.

11       3. On July 22, 2024, Plaintiff filed a Doe Amendment naming  
12 Aeroenlaces Nacionales, S.A. de C.V., trading as Viva Aerobus, as Doe 3.

13       4. On August 15, 2024, Viva Aerobus demurred to the first cause of  
14 action of Plaintiff's First Amended Complaint on the grounds that Viva Aerobus is  
15 not a "public entity" as defined by Government Code, and therefore, cannot be  
16 liable under Government Code Section 815.2. On September 10, 2024, the Court  
17 sustained Viva Aerobus' Demurrer with leave to amend.

18       5. On September 18, 2024, Plaintiff filed its Second Amended  
19 Complaint. The Second Amended Complaint asserts three causes of action for: (1)  
20 Vicarious Liability for Wrongful Acts or Omissions by Public Entity Employees  
21 and/or Retention of Unfit Employer Cal. Gov't. Code § 815.2; (2) Negligence, and  
22 (3) Violation of Montreal Convention. The Second Amended Complaint asserts a  
23 single cause of action against Viva Aerobus for violation of the Montreal  
24 Convention. The Second Amended Complaint is the first time that the Montreal  
25 Convention cause of action was asserted against Viva Aerobus. Even though the  
26 Second Amended Complaint was filed on September 18, 2024, it was served on  
27 September 17, 2024. A true and correct copy of the Second Amended Complaint  
28 filed in the state court is attached hereto as Exhibit "A." Accordingly, the thirty

1 (30) day time period for removal of an amended pleading, which it may first be  
 2 ascertained that the case is one which is or has become removable as provided in  
 3 28 U.S.C. § 1446(b)(3) has not yet elapsed.

4       6. This is a civil action by plaintiff Maria Prado (hereinafter “Plaintiff”)  
 5 against City of Los Angeles, Los Angeles World Airports, Viva Aerobus, and G2  
 6 Secure Staff LLC, Airport Terminal Management, Inc., and Airport Terminal  
 7 Services, Inc. seeking damages for personal injuries she allegedly sustained on  
 8 April 21, 2023, while embarking on a Viva Aerobus flight from Los Angeles to  
 9 Guadalajara, Mexico at Los Angeles International Airport (“LAX”). Plaintiff  
 10 alleges that while attempting to sit in a wheelchair, the wheelchair rolled  
 11 backwards due to an unspecified malfunction, causing Plaintiff to fall. *See*  
 12 Plaintiff’s Second Amended Complaint, Ex. A, p. 3, ¶¶ 10-14.

13       7. This is a civil action over which this Court has original jurisdiction  
 14 based upon the existence of a federal question pursuant to 28 U.S.C. § 1331, in that  
 15 Plaintiff’s lone cause of action against Viva Aerobus is for liability under the  
 16 Montreal Convention, a treaty of the United States.

17       8. The Montreal Convention, formally known as the Convention for the  
 18 Unification of Certain Rules for International Air Carriage by Air, May 28, 1999  
 19 (entered into force on November 4, 2003), *reprinted in* S. Treaty Doc. No. 106-45,  
 20 1999 WL 33292734, is the successor to the Warsaw Convention, (*Narayanan v.*  
 21 *British Airways*, 747 F.3d 1125, 1127 & n.2 (9th Cir. 2014)) and unifies and  
 22 replaces the system of liability that derives from the Warsaw Convention. *See*  
 23 *Ehrlich v. American Airlines, Inc.*, 360 F.3d 366, 371 (2d Cir. 2004).

24       9. The Montreal Convention is applicable to all “international carriage of  
 25 persons, baggage or goods performed by aircraft for reward.” Montreal  
 26 Convention, Art. 1(1); *Narayanan*, 747 F.3d at 1127; *Chubb Ins. Co. of Europe*  
 27 *S.A. v. Menlo Worldwide Forwarding, Inc.*, 634 F.3d 1023, 1026 (9th Cir. 2011).

28       10. This action, therefore, may be removed to this Court by Viva Aerobus

1 pursuant to the provisions of 28 U.S.C. § 1441(a). *See e.g., Husmann v. Trans*  
2 *World Airlines, Inc.*, 169 F.3d 1151, 1152 (8th Cir. 1999) (Warsaw Convention);  
3 *Fadhliah v. Societe Air France*, 987 F. Supp. 2d 1057, 1064 (C.D. Cal. 2013)  
4 (Montreal Convention); *Jack v. Trans World Airlines, Inc.*, 820 F. Supp. 1218,  
5 1226 (N.D. Cal. 1993) (Warsaw Convention); *Rosenbrock v. Deutsche Lufthansa,*  
6 *A.G., Inc.*, No. 6:16-CV-0003, 2016 WL 2756589, at \*20 (S.D. Tex. May 9, 2016)  
7 (Montreal Convention); *Moran v. Am. Airlines, Inc.*, No. 10-80878-CIV, 2011 WL  
8 13116533, at \*6 (S.D. Fla. Feb. 17, 2011), *report and recommendation adopted*,  
9 No. 10-80878-CIV, 2011 WL 13116534 (S.D. Fla. Mar. 9, 2011) (Montreal  
10 Convention); *Singh v. N. Am. Airlines*, 426 F. Supp. 2d 38, 45 (E.D.N.Y. 2006)  
11 (Warsaw Convention); *Mateo v. JetBlue Airways Corp.*, 847 F. Supp. 2d 383, 386  
12 (E.D.N.Y. 2012) (Montreal Convention); *Masudi v. Brady Cargo Servs., Inc.*, No.  
13 12-CV-2391 DLI, 2014 WL 4416502, at \*3 (E.D.N.Y. Sept. 8, 2014) (Montreal  
14 Convention); *Garrisi v. Nw. Airlines, Inc.*, No. 10-12298, 2010 WL 3702374, at \*5  
15 (E.D. Mich. Sept. 16, 2010) (Montreal Convention); *Schaefer-Condulmari v. U.S.*  
16 *Airways Grp., Inc.*, No. CIV.A. 09-1146, 2009 WL 4729882, at \*9 (E.D. Pa. Dec.  
17 8, 2009) (Montreal Convention).

18       11. According to the allegations in Plaintiff's Second Amended  
19 Complaint, at the time of the alleged incident on April 21, 2023, Plaintiff was  
20 traveling pursuant to a contract of carriage that provided for international carriage  
21 from Los Angeles to Guadalajara, Mexico.

22       12. The United States is a signatory to the Montreal Convention and the  
23 Montreal Convention entered into force in the United States on November 4, 2003.

24       13. Mexico is a signatory to the Montreal Convention and the Montreal  
25 Convention entered into force in the United States on November 4, 2003.

26       14. Accordingly, Plaintiff's lone cause of action against Viva Aerobus for  
27 liability under the Montreal Convention raises a federal question.

28       15. In addition to Viva Aerobus, the Second Amended Complaint names

1 as defendants the City of Los Angeles, Los Angeles World Airports, and Does 1  
2 through 100.

3       16. Viva Aerobus is informed and believes that defendants Los Angeles  
4 World Airports and City of Los Angeles were served with process of the First  
5 Amended Complaint in this action on April 9, 2024 and April 10, 2024,  
6 respectively, and those entities filed an answer to the First Amended Complaint.  
7 On May 22, 2024, Los Angeles World Airport and City of Los Angeles were  
8 dismissed from this matter without prejudice. *See* Request for Dismissal, Ex B.  
9 Despite the previous dismissal of Los Angeles World Airports and City of Los  
10 Angeles, the Second Amended Complaint again named City of Los Angeles and  
11 Los Angeles World Airports as defendants in this matter. The City of Los Angeles  
12 and Los Angeles World Airports were again dismissed from this lawsuit on  
13 October 1, 2024. A true and correct copy of this dismissal is attached hereto as  
14 Exhibit C.

15       17. On October 7, 2024, Plaintiff filed Doe Amendments naming Airport  
16 Terminal Management, Inc., as Doe 4, and naming Airport Terminal Services, Inc.  
17 as Doe 5. Plaintiff has filed proofs of service reflecting that Airport Terminal  
18 Services Inc. and Airport Terminal Management Inc. were served with process in  
19 this action on October 9, 2024. Airport Terminal Services Inc. was terminated as a  
20 corporation in California on February 20, 1996, and it is not a properly joined party  
21 to this lawsuit. *See* Certificate of Surrender, Ex. D. As noted above, Airport  
22 Terminal Management, Inc. (“ATM”) was purportedly served with the summons  
23 and complaint in this matter on October 9, 2024. ATM has not appeared in this  
24 matter, and there is no indication that ATM has retained counsel for this matter.  
25 Nonetheless, Viva Aerobus has made fourteen attempts to contact ATM to obtain  
26 consent to remove this matter to federal court. Unfortunately, no one at ATM who  
27 has been available to Viva Aerobus thus far has authority to consent to removal.  
28 Viva Aerobus therefore requests permission to cure the defect concerning ATM’s

1 consent to remove by obtaining joinder of ATM in Viva Aerobus' removal, on or  
2 before November 14, 2024. *See Destfino v. Reiswig*, 630 F.3d 952, 956-957 (9th  
3 Cir. 2011) (holding where all defendants who have been properly served have not  
4 consented in removal when notice of removal is filed, district court may allow  
5 removing defendants to cure defect by obtaining joinder of all defendants prior to  
6 entry of judgment).

7

**NOTICE PURSUANT TO**  
**FEDERAL RULE OF CIVIL PROCEDURE 44.1**

8

9 18. Viva Aerobus hereby gives notice that it may raise issues concerning  
10 the law of a foreign country in this matter.

11

12 WHEREFORE, Aeroenlaces Nacionales, S.A. de C.V., prays that the above-  
13 entitled action now pending in the Superior Court of the State of California for the  
14 County of Los Angeles be removed to this Court.

15

16 Dated: October 17, 2024

CONDON & FORSYTH LLP

17

18 By: /s/ Andrew C. Johnson  
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21 CHRISTINA V. FERREIRO  
22 Attorneys for Defendant  
23 AEROENLACES NACIONALES,  
24 S.A. DE C.V., trading as VIVA  
25 AEROBUS